

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL DOCKET NO.: 5:93CR40**

UNITED STATES OF AMERICA

vs.

CURTIS LEE O'NEAL,

Defendant.

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ORDER

THIS MATTER is before the Court on Defendant's *pro se* Motion to Modify Sentence, filed December 9, 2005.

On April 19, 1995, a jury found Defendant guilty of possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On February 20, 1996, this Court sentenced Defendant to 262 months imprisonment and, in addition to other conditions, ordered Defendant to pay a fine of \$10,000. After his sentencing but prior to the entry of judgment, Defendant filed a Notice of Appeal. Judgment was entered on April 16, 1996. On July 12, 1999, the United States Court of Appeals for the Fourth Circuit affirmed this Court's judgment. Subsequently, on February 16, 2000, Defendant filed a Motion to Vacate pursuant to 28 U.S.C. § 2255, which the Court denied in an Order dated September 18, 2000. On June 5, 2002, pursuant to a Motion from the Government, the Court reduced Defendant's sentence to 180 months imprisonment, with all other terms and conditions previously imposed remaining the same.

Defendant now asks the Court to modify its Judgment and withdraw the \$10,000 fine imposed on Defendant. In support of his Motion, Defendant points to the cooperation he provided to the Government and his rehabilitation while in prison, as well as his inability to

continue payments upon release from prison. Defendant advises the Court that to date he has paid \$3,000 of the \$10,000 fine.

Defendant's requested modification in sentence is governed by Rule 35 of the Federal Rules of Criminal Procedure. According to Rule 35(b) of the Federal Rules of Criminal Procedure, however, only the Government may bring a Rule 35 Motion for a reduction of sentence. Fed. R. Crim. P. 35(b); United States v. Hayes, 983 F.2d 78, 81 (7th Cir. 1992); see also United States v. Orozco, 160 F.3d 1309, 1315 (11th Cir. 1998), cert denied, 528 U.S. 1082 (2000); United States v. Fraley, 988 F.2d 4, 6 (4th Cir. 1993). Additionally, the Government may bring a Rule 35 motion in limited circumstances, i.e., only for substantial assistance rendered after sentencing. Fed. R. Crim. P. 35(b); Hayes, 983 F.2d at 81. Since this Motion was not brought by the Government, Defendant's motion is not properly before the Court.

IT IS, THEREFORE, ORDERED that Defendant's Motion to Modify Sentence is hereby **DENIED**.

The Clerk is directed to send copies of this Order to Defendant, defense counsel, and the attorney for the United States.

Signed: February 1, 2006



Richard L. Voorhees
Chief United States District Judge

